## (2) Southwestern Bell Mobile Systems

July 12, 1994

Via Hand Delivery

Karen B. Peck Attorney

Mr. William F. Caton Office of the Secretary Federal Communications Commission 1919 M Street, N.W. Stop Code 1170 Washington, D.C. 20554

RECEIVED

Distriction of the state of the

FJUE 1 2 1994

FEDERAL COMMUNICATIONS COMMISSION OFFICE OF SECRETARY

RE: GN Docket No. 94-33; In the Matter of Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service **Providers** 

Dear Mr. Caton:

Enclosed for filing in the above referenced proceeding are the original and nine copies of the Reply Comments of Southwestern Bell Mobile Systems, Inc. Please file these Reply Comments among the papers in this proceeding.

Please return a file-marked copy of the Reply Comments to our courrier.

Thank you for your assistance.

Very truly yours,

Enclosure

KBP:smh\caton-94.33

17330 Preston Road Suite 100A Dallas, Texas 75252

Phone 214 733-6163

No. of Copies rec'd

ListABCDE

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, D.C.

In the Matter of	S	
	§	GN Docket No. 94-33
	§	
Further Forbearance from	S	
Title II Regulation for	S	
Certain Types of Commercial	§	
Mobile Radio Service Providers	S	

RECEIVED

Description of the Great

10UM 2 1994

FEOERAL COMMUNICATIONS COMMISSION OFFICE OF SECRETARY

REPLY COMMENTS OF SOUTHWESTERN BELL MOBILE SYSTEMS, INC. ON NOTICE OF PROPOSED RULEMAKING

Wayne Watts
Carol L. Tacker
Karen B. Peck
17330 Preston Road
Suite 100A
Dallas, Texas 75252

ATTORNEYS FOR SOUTHWESTERN BELL MOBILE SYSTEMS, INC.

Dated: July 12, 1994

#### SUMMARY

In its reply comments, Southwestern Bell Mobile Systems, Inc. ("SBMS") again urges the Commission not to overlook the Congressional goal of regulatory symmetry by distinguishing among providers of commercial mobile radio service ("CMRS") solely on the basis of size. Regulatory parity must be maintained in order to avoid distortion of the CMRS market, creation of a confusing regulatory framework, and impediment of free competition.

The record in this proceeding supports a Commission determination that it should undertake minimal regulation of CMRS. In particular, in addition to the issues addressed by SBMS in its initial comments, the record supports a Commission determination (a) that Commission should not exempt a subclass of CMRS providers from Title II regulation on the basis of size, and (b) the Commission should forbear from applying the Telephone Operator Consumer Services Improvement Act to CMRS providers.

# PEFORE THE FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, D.C.

In the Matter of	§	
	S	GN Docket No. 94-33
	S	
Further Forbearance from	S	
Title II Regulation for	Š	
Certain Types of Commercial	Š	
Mobile Radio Service Providers	Š	

### REPLY COMMENTS OF SOUTHWESTERN BELL MOBILE SYSTEMS, INC.

To the Federal Communications Commission:

Southwestern Bell Mobile Systems, Inc. ("SBMS") submits these reply comments in response to the Commission's NPRM in the above-referenced proceeding. The Commission should strive for regulatory symmetry and not treat CMRS providers differently based on size. Moreover, the record in this proceeding plainly demonstrates that the Commission should forbear from regulation of all CMRS providers under the Telephone Operator Consumer Services Improvement Act, 37 U.S.C. § 226 ("TOCSIA").

### I. The Commission should not create regulatory distinctions among CMRS providers on the basis of size.

As discussed in SBMS' initial comments, the Commission should not create subclasses of providers of CMRS and discriminate among those subclasses for purposes of enforcing Title II of the Communications Act ("Title II"). The Commission should be demonstrating and implementing its commitment to regulatory symmetry, Congress' goal in enacting the Omnibus Budget and

Reconciliation Act of 1993 (the "Budget Act"). It would frustrate that goal for the Commission to embark on a course of preferential regulatory treatment for "small" carriers.

The vast majority of commenters sought limited regulation, at least as to certain Title II provisions, by the Commission. However, even those commenters who sought less regulation for "small" CMRS providers<sup>2</sup> did not point to any actions on the part of "large" CMRS providers that renders it necessary for the Commission to regulate "large" carriers but not "small" carriers. Rather, they sought to explain why carriers such as themselves should allegedly be exempt.

As SBMS and others have urged, the Commission should not abandon the goal of regulatory symmetry it so recently sought to implement. As noted by Bell Atlantic, the legislative history of the Budget Act "nowhere indicates that Congress contemplated any distinction based on the carrier's <u>size</u>." Comments of Bell Atlantic at 3. Furthermore, by imposing a system of regulatory disparity, the Commission would be creating a system of immense complexity. Deciding when a carrier is "large" enough to be

<sup>1</sup> Codified at 47 U.S.C. §§ 303(n), 332.

See, e.g., Comments of the American Mobile Telecommunications Association ("AMTA"), E. F. Johnson Co., National Association of Business and Educational Radio, Inc. ("NABER"), and the Utilities Telecommunications Council.

<sup>3 &</sup>lt;u>See</u> Comments of ALLTEL Mobile Communications, Inc.("ALLTEL"), Bell Atlantic Mobile Systems, Inc. ("Bell Atlantic"), BellSouth, Cellular Telecommunications Industry Association ("CTIA"), GTE Service Corporation ("GTE"), McCaw Cellular Communications, Inc., NYNEX Corporation, and Pacific Bell and Nevada Bell.

subject to Title II regulation would be a time-consuming task, and policing of compliance under such a regulatory framework would be even more difficult.

In short, Commission should not implement a regulatory scheme favoring certain carriers over others on the basis of size. Congress has sought a system of regulatory symmetry, and the Commission should not embark down a path contrary to that Congressional goal.

### II. The Commission should forbear from applying the Telephone Operator Consumer Services Improvement Act to CMRS providers.

The record in this proceeding overwhelmingly supports Commission forbearance from applying TOCSIA to CMRS providers. As indicated in SBMS' initial comments, forbearance from application of TOCSIA meets the three part test in Section 332 for forbearance.

Application of TOCSIA is not necessary to assure just, reasonable, and nondiscriminatory rates or to protect consumers, and forbearance is consistent with the public interest. <u>See</u> 47 U.S.C. § 332(c)(1)(A). No party to this proceeding has produced evidence that CMRS providers have undertaken the types of abusive practices cited by Congress in enacting TOCSIA. Indeed, as noted by GTE, mobile public phone service providers "actively seek to stimulate return business" and thus "have strong incentives to educate customers regarding their rates and service offerings...."

Furthermore, applying TOCSIA requirements to CMRS would be unreasonably expensive and technically difficult. Under the

Commission's TOCSIA Declaratory Ruling, cellular carriers that connect calls from mobile public phones to the public switched network would automatically be considered operator service providers ("OSPs"). For example, the underlying carrier would unwittingly become an OSP any time that a rental car equipped with a mobile phone in use travelled into its service area. Thus, in order to comply with TOCSIA, every CMRS provider would have to undergo the expense and effort of acquiring and/or configuring switches and software to brand roamer calls. GTE has estimated the cost of compliance for the cellular industry alone at more than twenty million dollars. This does not include the costs of complying with the tariff obligations of the Act.

Moreover, the underlying CMRS carrier could not comply with TOCSIA by providing meaningful rate information to the consumer, because it would have no knowledge of the rates charged by the provider of the mobile public phone. In fact, the Commission has cited no problems with lack of customer awareness as to mobile public phone rates, and provision of such information by the underlying carrier is not necessary because, as noted by GTE, "mobile public phone service providers have strong incentives to educate customers regarding their rates and service offerings..."

<sup>&</sup>lt;sup>4</sup> In the Matter of Petition for a Declaratory Ruling that GTE Airfone, GTE Railfone, and GTE Mobilnet Are Not Subject to the Telephone Operator Consumer Services Improvement Act of 1991, File No. MSD-92-14, Adopted August 18, 1993, 8 FCC Rcd 6171 (1993), Petition for Reconsideration Pending.

 $<sup>^5</sup>$  Comments of GTE at 7.

<sup>6</sup> Comments of GTE at 6.

As noted by ALLTEL, "[t]here is simply no problem to fix or public interest to be served by the imposition of TOCSIA requirements on any CMRS provider." Accordingly, the Commission should forbear from applying TOCSIA to all CMRS providers.

#### IV. CONCLUSION

Congress made plain its intent under the Budget Act -- that the Commission should implement a system of regulatory symmetry, treating CMRS providers alike. There is no basis for the Commission to depart from that course by according preferential regulatory treatment to certain carriers on the basis of size. Rather, the Commission should implement a uniform regulatory environment that will foster increased competition through application of minimal regulation.

Dated: July 12, 1994

Respectfully submitted,

SOUTHWESTERN BELL MOBILE SYSTEMS, INC.

By:\_

Wayne Watts

Carol L. Tacker

Karen B. Peck

17330 Preston Road, Ste. 100A

Dallas, Texas 75252

(214) 733-2000

(214) 733-2004 Telecopier

ATTORNEYS FOR SOUTHWESTERN BELL MOBILE SYSTEMS, INC.

Comments of ALLTEL at 3.

### Certificate of Service

I, Karen B. Peck, an attorney for Southwestern Bell Mobile Systems, Inc., do hereby certify that copies of the foregoing Reply Comments of Southwestern Bell Mobile Systems, Inc. were served on the 12th day of July, 1994, by first class, U.S. mail, postage prepaid, to the following:

Karen B. Peck CR

ALLTEL Mobile Communications, Inc. % Carolyn C. Hill
ALLTEL Service Corporation
655 15th Street, NW. Suite 220
Washington, D.C. 20005

American Mobile Telecommunications Association, Inc. % Elizabeth R. Sachs
Lukas, McGowan, Nace & Gutierrez
1819 H Street, N.W.
Seventh Floor
Washington, D.C. 20006

AT&T Corp.
% Robert J. McKee
Mark C. Rosenblum
Robert J. McKee
295 North Maple Avenue
Room 3245H1
Basking Ridge, NJ 07920

Bell Atlantic Mobile Systems, Inc. % John T. Scott, III
Charon J. Harris
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

BellSouth
% William B. Barfield
Jim O. Llewellyn
1155 Peachtree St., N.E. 1133 21st Street, N.W.
Atlanta, GA 30309-3610
Washington, D.C. 20036

Cellular Telecommunications Industry Association % Andrea D. Williams, Staff Counsel Michael F. Altschul, V.P./General Counsel 1250 Connecticut Avenue, N.W. Suite 200 Washington, D.C. 20036

Dial Page, Inc. % Gerald S. McGowan George L. Lyon, Jr. Lukas, McGowan, Nace & Gutierrez, Chartered 1819 H Street, N.W., 7th Floor Washington, D.C. 20006

E.F. Johnson Company % Russell H..Fox Gardner, Carton & Douglas 1301 K Street, N.W. Suite 900, East Tower Washington, D.C. 20005

Geotek Communications, Inc.
% Michael S. Hirsch, Vice President
 External Affairs
1200 19th Street, N.W., #607
Washington, D.C. 20036

GTE Service Corporation % Gail L. Polivy 1850 M Street, N.W. Suite 1200 Washington, D.C. 20036

McCaw Cellular Communications, Inc. % Cathleen Massey, Sr. Regulatory Counsel 1150 Connecticut Ave., N.W. 4th Floor Washington, D.C. 20036

National Association of Business and Educational Radio, Inc. % David E. Weisman, Esquire
Alan S. Tilles, Esquire
Meyer, Faller, Weisman and Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015

Nextel Communications, Inc. % Robert S. Foosaner, Sr. V.P.-Government Affairs Lawrence R. Krevor, Director-Government Affairs 800 Connecticut Avenue, N.W. Suite 1001 Washington, D.C. 20006

NYNEX Corporation % J.E. Holmes Nethersole Edward R. Wholl Jacqueline E. Holmes Nethersole 120 Bloomingdale Road White Plains, NY 10605

OneComm Corporation % Michael R. Carper, V.P. & General Counsel 4643 Ulster Street Suite 500 Denver, CO 80237

Pacific Bell and Nevada Bell
% James P. Tuthill
% James L. Wurtz
Jeffrey B. Thomas
140 New Montgomery St.,
Rm. 1522A
San Francisco, CA 94105

Personal Communications Industry Association % Mark J. Golden 1019 19th Street, N.W. Suite 1100 Washington, D.C. 20036

SEA, Inc.
% Thomas J. Keller
Verner, Liipfert, Bernhard McPherson
 and Hand, Chartered
901 Fifteenth Street, N.W., Suite 700
Washington, D.C. 20005-2327

Southern Company % Carole C. Harris Christine M. Gill Tamara Y. Davis Keller and Heckman 1001 G Street, N.W. Suite 500 West Washington, D.C. 20001

Utilities Telecommunications Council % Jeffrey L. Sheldon, General Counsel Sean A. Stokes, Sr. Staff Attorney 1140 Connecticut Ave., N.W. Suite 1140 Washington, D.C. 20036 Waterway Communications Systems, Inc. % Martin W. Bercovici Keller and Heckman 1001 G. Street, N.W. Suite 500 West Washington, D.C. 20001

WJG Maritel Corporation % Russell H. Fox Susan H. R. Jones Gardner, Carton & Douglas 1301 K Street, N.W. Suite 900, East Tower Washington, D.C. 20005